



0000088535

1 **ORIGINAL BEFORE THE ARIZONA CORPORATION COMMISSION**2 **COMMISSIONERS**3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

7000 SEP 10 A 9:34

Arizona Corporation Commission

AZ CORP COMMISSION
DOCKET CONTROL**DOCKETED**

SEP 10 2008

DOCKETED BY

*mm*7 IN THE MATTER OF THE FORMAL
8 COMPLAINT OF SULPHUR SPRINGS VALLEY
9 ELECTRIC COOPERATIVE, INC. AGAINST
ARIZONA ELECTRIC POWER COOPERATIVE,
INC.DOCKET NO. E-01575A-08-0358
E-01773A-08-0358**PROCEDURAL ORDER****BY THE COMMISSION:**

On July 15, 2008, Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC") filed with the Arizona Corporation Commission ("Commission") a formal complaint against the Arizona Electric Power Cooperative, Inc. ("AEPCO"). SSVEC alleges that AEPCO is not correctly allocating costs to partial requirements members pursuant the fuel and purchased power adjustment clause that was implemented in AEPCO's last rate case.

On July 24, 2008, AEPCO filed a Motion to Extend Answer/Response Time to August 15, 2008. SSVEC did not object.

By Procedural Order dated July 28, 2008, the deadline for AEPCO to file an Answer/Response to the Complaint was extended until August 15, 2008.

On August 1, 2008, Mohave Electric Cooperative, Inc. ("Mohave") filed an Application to Intervene. Mohave is a partial requirements member of AEPCO, and claims it will be directly and substantially affected by the proceedings in this docket.

On August 15, 2008, AEPCO filed its Answer to the Complaint.

On August 19, 2008, SSVEC filed a Request for Procedural Conference for the purpose of discussing a schedule and date for an evidentiary hearing; the presentation of evidence; procedures for discovery and any other relevant matters.

By Procedural Order dated August 21, 2008, a Procedural Conference was scheduled for

1 September 4, 2008, and Mohave was granted intervention.

2 On August 28, 2008, Trico Electric Cooperative, Inc. ("Trico"), a Class A and all
3 requirements member of AEPCO filed an Application for Leave to Intervene in this matter.

4 A telephonic Procedural Conference convened as scheduled on September 4, 2008, with
5 SSVEC, AEPCO, the Commission's Utilities Division ("Staff"), Mohave and Trico appearing
6 through counsel. No party objected to Trico's intervention and Trico was granted intervenor status
7 by the Administrative Law Judge.

8 SSVEC requested an opportunity to conduct discovery for 90 to 100 days and that a hearing
9 be scheduled in January, 2009. AEPCO stated that it was in the process of preparing a Motion to
10 Dismiss or Motion for Summary Judgment by September 30, 2008, and argued that depending on the
11 disposition of the Motion, the matter might be resolved without an evidentiary hearing. AEPCO
12 asserted that the data requests it has received to date are burdensome and could ultimately be
13 irrelevant depending on the outcome of the forthcoming potentially dispositive motion.
14 Consequently, AEPCO argued for the suspension of discovery pending resolution of its Motion.
15 SSVEC objected to suspending discovery.

16 At this juncture in the proceeding, AEPCO's request to suspend all discovery is premature.
17 There are no pending Motions and the Commission cannot determine in a vacuum whether the
18 discovery proffered to date would be irrelevant. Some discovery may be necessary to respond to any
19 Motions. To the extent AEPCO believes that discovery requests are burdensome or irrelevant it
20 should object, and if the parties are unable to reach an agreement of their dispute, SSVEC may want
21 to file a Motion to Compel Discovery Responses. Under such scenario, the Administrative Law
22 Judge will be able to resolve the discovery dispute in context of the pleadings. Consequently,
23 AEPCO's blanket request to suspend all discovery is denied. It is recognized that AEPCO may be
24 right that depending on the particulars of its potentially dispositive motions, not all of the discovery
25 sought by SSVEC may be relevant and we are likely to be called upon to re-address this question
26 shortly. The parties are encouraged, however, to exercise reason and attempt to reach compromise on
27 discovery issues. The hearing schedule set forth herein should be able to accommodate the
28

1 anticipated dispositive Motion from AEPCO,¹ and still permit SSVEC to proceed with its claim in a
2 timely manner. The schedule is slightly more extended than SSVEC originally requested in order to
3 accommodate pre-filed written testimony.

4 IT IS THEREFORE ORDERED that a **hearing** in this matter shall commence on **February**
5 **5, 2009, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, Room 222,
6 400 W. Congress Street, Tucson, Arizona.

7 IT IS FURTHER ORDER that **SSVEC, or Intervenors in support of SSVEC's claim**, shall
8 file direct testimony and any exhibits to be used at the hearing by **January 15, 2009**.

9 IT IS FURTHER ORDERED that **AEPCO and Intervenors** shall file any **Responsive**
10 **testimony** and any exhibits to be used at the hearing by **January 30, 2009**.

11 IT IS FURTHER ORDERED that parties shall file any **Motions to Dismiss or Motions for**
12 **Summary Judgment or Partial Summary Judgment by October 1, 2008**. Responses to such
13 **Motion(s)** shall be filed no later than **October 30, 2008**, and **Replies** no later than **November 14,**
14 **2008**. Oral argument, if necessary, will be scheduled by subsequent Procedural Order.

15 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
16 regulations of the Commission, except that any objection to discovery requests shall be made within
17 5 days of receipt and responses to discovery requests shall be made within 7 days of receipt;² the
18 response time may be extended by mutual agreement of the parties involved if the request requires an
19 extensive compilation effort.

20 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
21 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
22 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
23 request, a procedural hearing will be convened as soon as practicable; and that the party making such
24 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the
25 hearing provide a statement confirming that the other parties were contacted. The parties are
26

27
28 ¹ AEPCO has stated that it will be able to file its Motion by September 30, 2008.

² "Days" means calendar days.

1 encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before
2 seeking Commission resolution of the controversy.

3 IT IS FURTHER ORDERED that **Trico's Application to Intervene is granted.**

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
5 Communications) applies to this proceeding as the matter is now set for public hearing.

6 IT IS FURTHER ORDERED that **all parties must comply with Rules 31 and 38 of the**
7 **Rules of the Arizona Supreme Court and A.R.S. §40-243** with respect to practice of law and
8 admission *pro hac vice*.

9 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
10 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

11 DATED this 9th day of September, 2008.

12
13 
14 JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing mailed
this 9th day of September, 2008 to:

16 Bradley S. Carroll
17 Jeffrey W. Crockett
18 Snell & Wilmer
19 One Arizona Center
400 East Van Buren Street
Phoenix, Arizona 85004-2202
Attorneys for SSVEC

20 Michael M. Grant
21 Gallagher & Kennedy, PA
22 2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for AEPCO

23 Michael A. Curtis
24 William Sullivan
25 Larry K Udall
26 Curtis, Goodwin, Sullivan, Udall & Schwab, PLLC
501 East Thomas Road
Phoenix, Arizona 85012-3205
Attorneys for Mohave Electric Cooperative

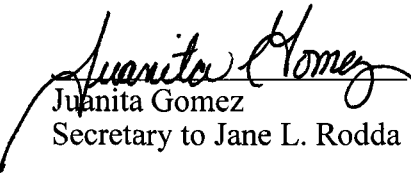
1 Russell E. Jones
2 Waterfall Economidis Caldwell Hanshaw
3 & Villmana, PC
4 5210 E. Williams Circle, #800
5 Tucson, Arizona 85711-4482
6 Attorneys for Trico

7 Ms. Janice Alward, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Mr. Ernest Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 ARIZONA REPORTING SERVICE, INC.
18 2200 North Central Avenue, Suite 502
19 Phoenix, Arizona 85004-1104

20 By:

21 
22 Juanita Gomez
23 Secretary to Jane L. Rodda
24
25
26
27
28